

Daniel J. Kornstein (DK - 3264)  
KORNSTEIN VEISZ WEXLER & POLLARD, LLP  
757 Third Avenue  
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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
MITSUBISHI INTERNATIONAL :  
CORPORATION, : 08 CV 00194 (JSR) (GWG)  
 :  
Plaintiff, : REPLY AFFIDAVIT  
 :  
-against- :  
 : ECF Case  
INTERSTATE CHEMICAL CORPORATION, :  
 :  
Defendant. :  
-----X

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF NEW YORK )

DANIEL J. KORNSTEIN, being duly sworn, deposes and says:

1. I am a member of Kornstein Veisz Wexler & Pollard, LLP, attorneys for plaintiff Mitsubishi International Corporation ("MIC"). I have personal knowledge of the facts set forth in this reply affidavit, which I make in further support of plaintiff's motion for summary judgment.

2. Annexed as Exhibit 5 hereto is a copy of Plaintiff's Responses and Objections to Defendant's First Set of Document Requests.

  
DANIEL J. KORNSTEIN

Sworn to this 18<sup>th</sup>  
day of April, 2008

  
Notary Public

AMY C. GROSS  
Notary Public, State of New York  
No. 02GR6133341  
Qualified in New York County  
Commission Expires Sept. 12, 2009

# Exhibit 5

Daniel J. Kornstein (DK - 3264)  
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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
MITSUBISHI INTERNATIONAL :  
CORPORATION, : 08 CV 00194 (JSR) (GWG)  
 :  
Plaintiff, : **PLAINTIFF'S RESPONSES**  
 : **AND OBJECTIONS TO**  
-against- : **DEFENDANT'S FIRST SET**  
 : **OF DOCUMENT REQUESTS**  
INTERSTATE CHEMICAL CORPORATION, :  
 : ECF Case  
Defendant. :  
-----X

Plaintiff Mitsubishi International Corporation ("MIC"), for its responses and objections to Defendant's First Set of Document Requests (the "Requests"), states:

**GENERAL OBJECTIONS**

1. Plaintiff objects to defendant's Requests to the extent they seek disclosure of documents or communications protected by the attorney-client privilege, the work product doctrine, or other applicable privilege. Inadvertent production of any privileged document otherwise immune from discovery shall not be deemed a waiver of any applicable privilege or work product doctrine.

2. Plaintiff objects to defendant's Requests to the extent that they seek documents that are not material and necessary to

the prosecution or defense of this action.

3. Plaintiff objects to defendant's Requests to the extent they are vague, overbroad, onerous and unduly burdensome.

4. Plaintiff objects to defendant's Requests to the extent that they seek to impose any obligations greater than or different from those permitted under the Federal Rules of Civil Procedure and the Local Rules of the United States District Court for the Southern District of New York.

5. Plaintiff objects to defendant's Requests to the extent that they seek documents that pre- or post-date the time period relevant to this action.

6. Plaintiff objects to defendant's Requests to the extent they seek documents already in defendant's possession or at least as likely to be in the possession of defendant as of plaintiff.

7. Plaintiff objects to defendant's Requests to the extent that they require plaintiff to obtain documents from, or with respect to, any entity or person other than plaintiff or any persons not currently in plaintiff's employ and/or over whom plaintiff does not have control.

8. Plaintiff objects to defendant's Requests to the extent they seek documents available from public sources.

9. Plaintiff's document production and these responses are not an admission that any of the responses or documents produced are relevant or admissible in evidence.

10. Plaintiff reserves the right to supplement its responses.

11. Plaintiff's General Objections to the Requests are incorporated by reference in plaintiff's response and objection to each of the individual Requests.

#### **SPECIFIC RESPONSES**

##### Request No. 1:

All documents concerning the "agreement" as alleged in the Complaint.

##### Response to Request No. 1:

Plaintiff objects to this Request to the extent that it calls for documents subject to the attorney-client and/or work product privileges. Plaintiff also objects to this request on the ground that it calls for documents that are within defendant's possession. Subject to and without waiving its General and Specific Objections and subject to an appropriate stipulation and order of confidentiality, plaintiff will produce responsive documents, if any, at a time and place to be mutually agreed upon by counsel for the parties.

Request No. 2:

All documents concerning any and all communications concerning the "agreement" as alleged in the Complaint.

Response to Request No. 2:

Plaintiff objects to this Request to the extent that it calls for documents subject to the attorney-client and/or work product privileges. Plaintiff also objects to this request on the ground that it calls for documents that are within defendant's possession. Subject to and without waiving its General and Specific Objections and subject to an appropriate stipulation and order of confidentiality, plaintiff will produce responsive documents, if any, at a time and place to be mutually agreed upon by counsel for the parties.

Request No. 3:

All written communications between Mitsubishi and Interstate.

Response to Request No. 3:

Plaintiff objects to this Request on the grounds that: (1) it is vague, overbroad, onerous, and unduly burdensome; (2) it seeks documents and information that are not material and necessary in the prosecution and defense of this action and are not reasonably calculated to lead to the discovery of admissible evidence in that it seeks documents from outside the time frame relevant to this dispute; and (3) it calls for documents that are within defendant's possession. To the extent plaintiff has

documents responsive to this Request and relevant to this action, they will be produced pursuant to the objections set forth in response to Requests Nos. 1 and 2.

Request No. 4:

All documents concerning any and communications between Mitsubishi and Interstate

Response to Request No. 4:

Plaintiff objects to this request to the extent that it calls for documents subject to the attorney-client and/or work product privileges. Plaintiff also objects to this Request on the grounds that: (1) it is vague, overbroad, onerous, and unduly burdensome; (2) it seeks documents and information that are not material and necessary in the prosecution and defense of this action and are not reasonably calculated to lead to the discovery of admissible evidence; and (3) it calls for documents that are within defendant's possession. To the extent plaintiff has documents responsive to this Request and relevant to this action, they will be produced pursuant to the objections set forth in response to Requests Nos. 1 and 2.



Request No. 5:

All documents concerning any and all transactions between Mitsubishi and Interstate prior to December 4, 2007.

Response to Request No. 5:

Plaintiff objects to this Request on the grounds that: (1) it is vague, overbroad, onerous, and unduly burdensome; (2) it seeks documents and information that are not material and necessary in the prosecution and defense of this action and are not reasonably calculated to lead to the discovery of admissible evidence; and (3) it calls for documents that are within defendant's possession. To the extent plaintiff has documents responsive to this Request and relevant to this action, they will be produced pursuant to the objections set forth in response to Requests Nos. 1 and 2.

Request No. 6:

All documents concerning the allegation in ¶ 20 of the Complaint that "MIC was willing and able to deliver the methanol to Interstate. . . ."

Response to Request No. 6:

Plaintiff objects to this Request to the extent that it calls for documents subject to the attorney-client and/or work product privileges. Subject to and without waiving its General and Specific Objections and subject to an appropriate stipulation and order of confidentiality, plaintiff will produce responsive

documents, if any, at a time and place to be mutually agreed upon by counsel for the parties.

Request No. 7:

All documents evidencing the "prompt efforts to mitigate" as alleged in ¶ 21 of the Complaint.

Response to Request No. 7:

Plaintiff objects to this Request to the extent that it calls for documents subject to the attorney-client and/or work product privileges. Subject to and without waiving its General and Specific Objections and subject to an appropriate stipulation and order of confidentiality, plaintiff will produce responsive documents, if any, at a time and place to be mutually agreed upon by counsel for the parties.

Request No. 8:

All written communications between Mitsubishi and Tauber Petrochemical Company since January 1, 2006.

Response to Request No. 8:

Plaintiff objects to this Request on the grounds that: (1) it is vague, overbroad, onerous, and unduly burdensome; (2) it seeks documents and information that are not material and necessary in the prosecution and defense of this action and are not reasonably calculated to lead to the discovery of admissible evidence; and (3) it seeks documents that are within the possession of third parties. Subject to and without waiving its

General and Specific Objections and subject to an appropriate stipulation and order of confidentiality, plaintiff will produce responsive documents limited to those relating to plaintiff's sale of methanol to Tauber Petrochemical Company in December 2007, if any, at a time and place to be mutually agreed upon by counsel for the parties.

Request No. 9:

All documents concerning any and communications between Mitsubishi and Tauber Petrochemical Company since January 1, 2006.

Response to Request No. 9:

Plaintiff objects to this request to the extent that it calls for documents subject to the attorney-client and/or work product privileges. Plaintiff also objects to this Request on the grounds that: (1) it is vague, overbroad, onerous, and unduly burdensome; (2) it seeks documents and information that are not material and necessary in the prosecution and defense of this action and are not reasonably calculated to lead to the discovery of admissible evidence; and (3) it seeks documents that are within the possession of third parties. Subject to and without waiving its General and Specific Objections and subject to an appropriate stipulation and order of confidentiality, plaintiff will produce responsive documents limited to those relating to plaintiff's sale of methanol to Tauber Petrochemical Company in

December 2007, if any, at a time and place to be mutually agreed upon by counsel for the parties.

Request No. 10:

All documents concerning any and all transactions between Mitsubishi and Tauber Petrochemical Company since January 1, 2006.

Response to Request No. 10:

Plaintiff objects to this request to the extent that it calls for documents subject to the attorney-client and/or work product privileges. Plaintiff also objects to this Request on the grounds that: (1) it is vague, overbroad, onerous, and unduly burdensome; (2) it seeks documents and information that are not material and necessary in the prosecution and defense of this action and are not reasonably calculated to lead to the discovery of admissible evidence; and (3) it seeks documents that are within the possession of third parties. Subject to and without waiving its General and Specific Objections and subject to an appropriate stipulation and order of confidentiality, plaintiff will produce responsive documents limited to those relating to plaintiff's sale of methanol to Tauber Petrochemical Company in December 2007, if any, at a time and place to be mutually agreed upon by counsel for the parties.

Request No. 11:

All documents concerning the price Mitsubishi paid for the Methanol it allegedly sold at \$2.05 per gallon as alleged ¶ 27 of the Complaint.

Response to Request No. 11:

Plaintiff objects to this request to the extent that it calls for documents subject to the attorney-client and/or work product privileges. Plaintiff also objects to this Request on the grounds that: (1) it is vague, overbroad, onerous, and unduly burdensome; (2) it seeks documents and information that are not material and necessary in the prosecution and defense of this action and are not reasonably calculated to lead to the discovery of admissible evidence; and (3) it seeks documents that are within the possession of third parties.

Request No. 12:

All documents concerning the allegation in ¶ 26 of the Complaint that "in reliance upon Interstate's promise, MIC reserved the barge of methanol in its inventory," including but not limited to any and all documents evidencing such "reservation."

Response to Request No. 12:

Plaintiff objects to this request to the extent that it calls for documents subject to the attorney-client and/or work product privileges. Subject to and without waiving its General and Specific Objections and subject to an appropriate stipulation and order of confidentiality, plaintiff will produce responsive

documents, if any, at a time and place to be mutually agreed upon by counsel for the parties.

Request No. 13:

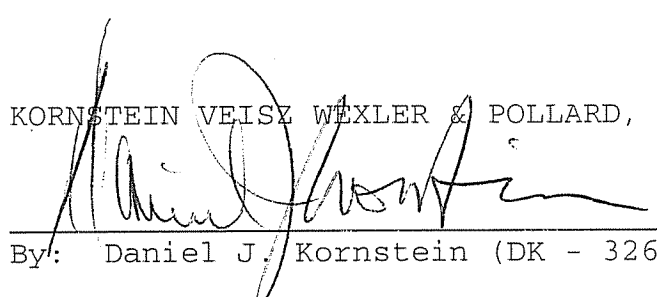
All documents, to the extent not produced in response to the foregoing Requests, that Mitsubishi will rely upon to support its claims or to rebut Interstate's Affirmative Defenses.

Response to Request No. 13:

Plaintiff objects to this catch-all Request to the extent that it calls for documents subject to the attorney-client and/or work product privileges. Plaintiff also objects to this catch-all Request on the grounds that: (1) it is vague and indefinite; (2) it seeks documents that are within the defendant's possession and/or the possession of third parties; and (3) it is premature.

Dated: New York, New York  
April 18, 2008

KORNSTEIN VEISZ WEXLER & POLLARD, LLP

  
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